

Message Text

LIMITED OFFICIAL USE

PAGE 01 BONN 07498 01 OF 02 222000Z
ACTION EUR-12

INFO OCT-01 ISO-00 TRSE-00 CA-01 IO-13 ACDA-12 CIAE-00
PM-05 H-01 INR-10 L-03 NSAE-00 NSC-05 PA-01
SP-02 SS-15 ICA-11 /092 W
-----022496 222022Z /42

R 211512Z APR 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC 7919
INFO DIA WASHDC
USMISSION USNATO
USNMR SHAPE
CINC USAREUR HEIDELBERG
CINC USAFE RAMSTEIN
CINC EUR VAIHINGEN

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 07498

E.O. 11652: N/A
TAGS: MORG, MPOL, GW
SUBJECT: FRG MILITARY SERVICE LAW

REFS: A) BONN 6792 DTG 131849Z APR 78
B) BONN 3011 DTG 161830Z FEB 78

BEGIN SUMMARY: ON APRIL 13, 1978, THE FEDERAL CONSTI-
TUTIONAL COURT RULED THE FRG'S LIBERALIZED DRAFT LAW
UNCONSTITUTIONAL. THE COURT ARGUED THAT MILITARY AND
ALTERNATE CIVILIAN SERVICE ARE NOT EQUAL METHODS OF
DISCHARGING ONES OBLIGATION TO THE STATE AND THAT
ALTERNATE CIVILIAN SERVICE STATUS CAN BE GRANTED ONLY
TO THOSE WHO HAVE PASSED AN APPROPRIATE EXAMINATION OF
THEIR REASONS FOR REFUSING COMBATANT STATUS. THE
GOVERNMENT NOW HAS THE OPTION OF RESTRUCTURING THE
ALTERNATE CIVILIAN SERVICE CONCEPT BY EXTENDING THE
PERIOD OF SERVICE TO TWENTY-FOUR MONTHS, FROM EIGHTEEN,
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BONN 07498 01 OF 02 222000Z

AND MAKING CIVILIAN SERVICE A MORE DEMANDING FORM OF
ALTERNATE SERVICE. ONE JUSTICE DISSENTED, ARGUING THAT
IN ALL CASES IN WHICH MILITARY OR COMBATANT SERVICE IS
A FACTOR, PERSONAL CONSCIENCE WAS ABSOLUTELY
SOVEREIGN. POLITICAL YOUTH GROUPS PLAN A SERIES OF
PROTESTS AGAINST THE COURT'S DECISION THROUGHOUT THE
FRG. THE GOVERNMENT IS PRESENTLY IN THE PROCESS OF

IDENTIFYING WAYS OF IMPROVING BOTH THE QUALITY AND QUANTITY OF ALTERNATE CIVILIAN SERVICE INCLUDING ITS EXTENSION AND THE INTRODUCTION OF A MORE REGIMENTED AND FORMALIZED STRUCTURE. END SUMMARY.

1. ON APRIL 13, 1978, THE FEDERAL CONSTITUTIONAL COURT IN KARLSRUHE DECLARED UNCONSTITUTIONAL THE FRG'S LIBERALIZED MILITARY DRAFT LAW WHICH HAD ENTERED INTO EFFECT ON AUGUST 1, 1977.

2. THE COURT IN A SEVENTY PAGE JUSTIFICATION OF ITS RULING STATED THAT THE NEW LEGISLATION WAS NOT COMPATIBLE WITH THE CONCEPT OF EQUALITY BEFORE THE LAW; WITH THE FREEDOM OF FAITH AND CONSCIENCE OR WITH THE GUARANTEES OF RELIGIOUS AND IDEOLOGICAL LIBERTY PROVIDED UNDER THE FRG'S BASIC LAW (GRUNDGESETZ).

3. EQUITY UNDER THE LAW OF CONSCRIPTION, THE COURT STATED, DEMANDS THAT ONLY THOSE DRAFTEES BE CLASSIFIED AS CONSCIENTIOUS OBJECTORS WHO ARE DEEMED TO MEET THE PREREQUISITES OF ARTICLE 4 OF THE BASIC LAW, WHICH STATES THAT NO INDIVIDUAL MAY BE COMPELLED AGAINST THE DICTATES OF HIS CONSCIENCE TO PERFORM COMBATANT SERVICE.

4. THE DECISION WENT ON TO SAY THAT THE CONCEPT OF ALTERNATE CIVILIAN SERVICE SHOULD NOT BE SEEN AS A LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BONN 07498 01 OF 02 222000Z

SUBSTITUTE FOR MILITARY SERVICE, BUT WAS SPECIFICALLY WRITTEN INTO THE BASIC LAW TO PROVIDE RELIEF FOR THOSE DRAFTEES REFUSING ARMED SERVICE FOR REASONS OF CONSCIENCE.

5. THE EQUITY IN CONSCRIPTION CLAUSE OF THE BASIC LAW CANNOT BE SATISFIED, THE COURT RULED, BY OFFERING THE CONSCRIPT A CHOICE OF EITHER BEING DRAFTED FOR THE MILITARY OR PERFORMING ALTERNATE CIVILIAN SERVICE. THE BASIC LAW AS A MATTER OF PRINCIPLE REQUIRES THAT ALL MALE CITIZENS PERFORM MILITARY SERVICE AND, IN FACT, PROHIBITS THE INTRODUCTION OF THE CONCEPT OF ALTERNATE CIVILIAN SERVICE EXCEPT IN THOSE CASES WHERE THE INDIVIDUAL SPECIFICALLY REFUSES TO BEAR ARMS AS A MATTER OF CONSCIENCE.

6. THE COURT'S RULING PROVIDES THE GOVERNMENT THE OPTION OF RESTRUCTURING THE ALTERNATE SERVICE FEATURE BY EXTENDING IT TO TWENTY-FOUR MONTHS, AS OPPOSED TO THE PRESENT EIGHTEEN. THIS PROPOSAL WOULD EXTEND CIVILIAN SERVICE NINE MONTHS BEYOND THE MANDATORY FIFTEEN MONTH PERIOD OF MILITARY SERVICE. THIS TYPE OF RESTRUCTURING, THE COURT REASONED, WOULD BE MORE

EQUITABLE, SINCE CIVILIAN SERVICE DOES NOT CARRY WITH
IT THE MANY BURDENS AND INCONVENIENCES THAT NATIONAL

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 BONN 07498 02 OF 02 222001Z
ACTION EUR-12

INFO OCT-01 ISO-00 TRSE-00 CA-01 IO-13 ACDA-12 CIAE-00
PM-05 H-01 INR-10 L-03 NSAE-00 NSC-05 PA-01
SP-02 SS-15 ICA-11 /092 W
-----022537 222022Z /42

R 211512Z APR 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC 7920
INFO DIA WASHDC
USMISSION USNATO
USNMR SHAPE
CINC USAREUR HEIDELBERG
CINC USAFE RAMSTEIN
CINC EUR VAIHINGEN

LIMITED OFFICIAL USE SECTION 02 OF 02 BONN 07498

MILITARY SERVICE DOES.

7. THE COURT ALSO RULED THAT THE ORAL EXAMINATION
METHOD OF EXAMINING CANDIDATES REQUESTING CONSCIENTIOUS
OBJECTOR STATUS WAS CONSTITUTIONAL AND SERVED AS A
SATISFACTORY VEHICLE FOR THE ESTABLISHMENT OF
CONSCIENTIOUS OBJECTOR STATUS.

8. IN THE ONE DISSENTING OPINION, JUDGE MARTIN HIRSCH
MAINTAINED THAT THE LIBERALIZED DRAFT LAW WAS CONSTI-
TUTIONAL. HIRSCH ARGUED THAT EVEN IN CASES OF ARMED
CONFLICT NATIONAL DEFENSE PRIORITIES ARE SECONDARY TO
THE DICTATES OF INDIVIDUAL CONSCIENCE. PERSONAL
CONSCIENCE, HIRSCH ARGUED, IS ABSOLUTELY SOVEREIGN IN
ALL MATTERS RELATED TO THE POWERS OF THE STATE OR ITS
AGENTS AND THAT, CONSEQUENTLY, ANY FORM OF REFUSAL OF
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 BONN 07498 02 OF 02 222001Z

NATIONAL MILITARY SERVICE SHOULD BE HONORED AND ACCEPTED.

9. THE CONSTITUTIONAL COURT'S DECISION UNDERSTANDABLY ELICITED DIFFERING REACTIONS FROM THE INDIVIDUAL POLITICAL PARTIES. THE CHAIRMAN OF THE CSU FRAKTION,

FRIEDRICH ZIMMERMAN, VIEWED THE DECISION AS WARDING OFF A SERIOUS ATTACK OF THE SPD/FDP COALITION ON CONSTITUTIONAL ORDER. CDU DEPUTY WILLI WEISHIRCH EXPRESSED THE HOPE THAT THE GOVERNMENT COALITION WILL NOW UNDERTAKE AN UNPREJUDICED STOCK TAKING OF THE PROBLEMS RELATED TO THE CONCEPT OF ALTERNATE CIVILIAN SERVICE. SPD DEPUTIES GERHARD JOHN, GUENTHER BIERMANN AND HELMUT MOEHRING SAID THAT THE SPD WILL MAKE A DETAILED ANALYSIS OF THE COURT'S DECISION AND ATTEMPT TO COORDINATE ANY FUTURE LEGISLATION ON THIS ISSUE WITH THE LAENDER GOVERNMENTS. FDP DEPUTIES JUERGEN MOELLEMANN, DETLEF KLEINERT AND DIETRICH HOELSCHER ALSO AGREED THAT A COMPLETE REVIEW OF THE PRESENT SYSTEM WAS NEEDED, WITH SPECIAL EMPHASIS ON ANALYZING THE PRESENT FORM OF ORAL EXAMINATION OF APPLICANTS APPLYING FOR CONSCIENTIOUS STATUS WITH A VIEW TOWARD DEVELOPING OTHER MEANS OF EXAMINATION TO DETERMINE SUCH STATUS.

10. THE FEDERAL MINISTRY OF LABOR, WHICH HAS THE RESPONSIBILITY OF IMPLEMENTING THE ALTERNATE CIVILIAN SERVICE PROGRAM, ISSUED A STATEMENT INDICATING THAT THEY WILL CAREFULLY REVIEW THE COURT'S RULING AND WILL MAKE EVERY EFFORT TO USE THE MANEUVERING SPACE LEFT BY THE DECISION TO EXPAND THEIR CAPACITY FOR THOSE OPTING FOR ALTERNATE CIVILIAN SERVICE AND TO ATTEMPT

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 BONN 07498 02 OF 02 222001Z

TO IMPROVE THE QUALITY AND QUANTITY OF SUCH WORK, SO THAT THOSE RENDERING SUCH SERVICE ARE PERFORMING DUTIES MORE ON PAR IN TERMS OF PERSONAL INCONVENIENCE AND DIFFICULTY WITH THAT PERFORMED BY MEMBERS OF THE BUNDESWEHR.

11. THE ORGANIZATION OF CIVILIAN SERVICE ENLISTEES, SUPPORTED BY THE YOUNG SOCIALIST AND YOUNG DEMOCRAT YOUTH GROUPS PLANS FRG WIDE PROTESTS AGAINST THE COURT'S RULING. SPOKESMEN FOR THESE ORGANIZATIONS ATTACKED THE

COURT'S DECISION AS JEOPARDIZING DEMOCRACY IN THE FRG.
THE GROUPS PLAN PROTEST ACTIONS IN MORE THAN 200 CITIES,
WHICH WILL INCLUDE THE PUBLIC BURNING OF MILITARY SERVICE
BOOKS (WEHRPAESSE) AND LIMITED HUNGER STRIKES.
ORGANIZATION REPRESENTATIVES WERE SHARPLY CRITICAL OF
PROPOSALS CALLING FOR A MORE REGIMENTED MILITARY-LIKE
ALTERNATE CIVILIAN SERVICE AND CALLED FOR THE EXPANSION
OF ADDITIONAL CIVILIAN SERVICE POSITIONS IN THE CIVILIAN
SECTOR.
MEEHAN

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSCRIPTION, MILITARY LAW, COURT DECISIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 21 apr 1978
Decaption Date: 20 Mar 2014
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BONN07498
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780172-1089
Format: TEL
From: BONN
Handling Restrictions:
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780428/aaaaaxuo.tel
Line Count: 234
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 361c54a9-c288-dd11-92da-001cc4696bcc
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: ONLY
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: ONLY
Reference: 78 BONN 6792
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 31 mar 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2882763
Secure: OPEN
Status: NATIVE
Subject: FRG MILITARY SERVICE LAW
TAGS: MORG, MPOL, GE
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/361c54a9-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014